NGB EEO/EO SPRING TRAINING CONFERENCE

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I. Introduction

Agencies are encouraged to seek resolution of EEO complaints through settlement at any time during the administrative or judicial process. Agencies and complainants should be creative in considering settlement

II. Authority

- **Title VII of the Civil Rights Act of 1964 expressly encourages settlement of employment discrimination disputes without litigation.**

- **Courts have consistently encouraged the settlement of**

II. Authority (Continued)

- **The Supreme Court held that federal employees have the same rights under the employment discrimination statues as private sector employees, thus recognizing the rights of federal employees to enter into voluntary settlements with federal agencies.**

- **The same analysis applies to disputes brought under section 501 or 505 of the Rehabilitation Act of 1973, section 15 of**

III. Authority (Continued)

- **Conciliation and voluntary settlement are critical to efforts to eradicate employment discrimination, both in the public and private sectors.**

- **EEOC's strong support for settlement attempts at all stages of the EEO complaint process is codified in**

IV. Authority (Continued)

- **The Department of Justice Office of Legal Counsel has affirmed the broad authority of agencies to settle EEO disputes by applying remedies a court could order if the case were to go to trial.**

- **The Comptroller General has confirmed the authority of agencies to enter into settlements of EEO claims and**

V. Authority for Back Pay

- **The connection between Title VII and the Back Pay Act arises only because EEOC has provided in its regulations on remedial actions that when discrimination is found, and award of back pay under Title VII is to be computed in the same manner as under the Back Pay Act.**

Authority for Back Pay (Continued)

- **The independent Title VII authority to settle EEO claims is significant because unlike the Back Pay Act, Title VII does not limit awards of back pay to situations where there has been a finding of an unjustified or unwarranted personnel action.**

VI. No Finding Of Discrimination Necessary For Settlements

- **It has long been the practice in both the private sector and the federal sector for employers and agencies to enter into settlements that contain cash payments where there has been neither a finding of discrimination, either judicially or administratively,**

VII. Cash Awards Without Corresponding Personnel Actions

- **Settlements of EEO disputes may contain monetary payments that are independent of any personnel action, provided that the monetary payment does not exceed the amount of back pay, attorney's fees, costs or damages the employee would have been entitled to in the case if discrimination had**

VIII. Personnel Actions With Lump Sum Payments

- **An agency may informally settle an EEO complaint by providing a retroactive personnel action, by providing for a lump sum payment in lieu of back pay as long as the settlement does not exceed the relief to which the complainant would be entitled if a finding of discrimination has been made, is authorized.**

IX. Implementing Settlement Agreements

- **Title VII provides authority to enter into settlements of EEO complaints and likewise,**

Title VII provides authority for agencies to

effectuate the terms of those settlements.

X. Offer Of Resolution

- **Agencies are now permitted to make offers of resolution to the complainant up at all times during the complaint process.**

- **An offer of resolution will be in writing with explanation of what is offered. The written offer must**